

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2606 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JUMMANBHAI BHURABHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for Respondents Nos. 1 to 3,

MR SUNIL C PATEL for Respondent No. 4

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 20/3/1997 passed by the respondent no.2 being the District Magistrate u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short

'PBM Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B. The synopsis of the grounds supplied to this Court inter-alia indicates that the petitioner is engaged in a firm in the name and style of "J.R. Trading Company" carrying on business of free sale of kerosene. On 20/2/1997 PSI, District Traffic, Ahmedabad Rural intercepted one tempo bearing no. GJ-1-V-Y-4149 on suspicion. The petitioner's statement was recorded and stock of 660 ltrs. of kerosene contained in 3 barrels loaded in the tempo was taken to Sarkhej Police Station. The petitioner's statement recorded by the police would indicate that the said stock of kerosene was loaded from the aforesaid firm of M/s. J.R. Trading Company under a stock bill no. 110. One Nadeembhai, the driver of the tempo, stated before the police that the said stock of kerosene was loaded by the petitioner on 19/2/1997 under the aforesaid bill. One Mr. Babuka, owner of the tempo, in his statement dated 24/2/1997 stated that the kerosene was sold by the petitioner under the aforesaid bill of M/s. J.R. Trading Company.

3. Police Department informed the concerned Department about the seizure of the stock of kerosene as stated above. During the course of investigation the tempo driver further stated that the stock of 660 ltrs. of blue kerosene was loaded on his tempo on 19/2/1997 by the petitioner in presence of one Luckibhai and the bill no. 110 of M/s. J.R. Trading Company was issued. In that bill one Laxmanbhai Mawawala of village Kesaradi has been shown as the purchaser. Said driver Nadeembhai identified the petitioner in presence of the Panchas.

4. Luckibhai was not traced at his residence and hence notice dated 21/2/1997 was issued by City Mamlatdar directing him to remain present. The process was repeated on 25/2/1997, but his residence was found closed and hence, notice was affixed on the door of the house in presence of Panchas. Luckibhai, however, did not remain present till date and has been stated to be absconding. It has been alleged that Luckibhai's conduct shows that he has been abetting the petitioner in the kerosene distribution system. The petitioner, however, denied the allegations of having loaded the said stock of kerosene as well as having issued the bill as aforesaid. The petitioner has also denied the allegations with regard to carrying on business in blue kerosene. It is alleged that the petitioner has accordingly denied the real fact with a view to conceal his conspiracy with aforesaid

luckibhai.

5. Aforesaid Nadeembhai, the driver of the tempo stated that he was knowing Laxmanbhai of village Kesaradi. According to him Laxmanbhai wanted kerosene and, therefore, he asked to get 3 barrel of kerosene if it was available near Sarkhej. Hence, driver Nadeembhai informed petitioner and Luckibhai about the requirement of 3 barrel of kerosene. It is alleged that the petitioner and Luckibhai informed that the kerosene was available and he (the driver) should reach Sarkhej crossing along with the tempo. The driver, therefore, reached aforesaid M/s. J.R. Trading Company at Sarkhej and the petitioner supplied 3 barrels of kerosene in presence of Luckibhai as stated above under the bill no. 110 prepared in the name of Laxmanbhai Mawawala. The petitioner accordingly received Rs.6600/- in cash as alleged by the driver.

6. From the aforesaid fact it has been asserted in the grounds of detention that the petitioner sold blue coloured kerosene, the analysis whereof as particularised in the grounds of detention reveal that such kerosene was meant for the card holders of the weaker sections as per the public distribution system announced by the Government and that it could not be sold without permit and further that the petitioner did not hold any permit to sell such blue kerosene. Hence, petitioner alongwith aforesaid Luckibhai illegally obtained stock of kerosene and sold at higher profit and committed serious irregularities of encouraging profiteering and black marketing thereby depriving the needful card holders for having the stock of kerosene.

7. The petitioner accordingly met with the impugned order of detention and has been under detention thereunder.

8. The impugned order of detention has been challenged on number of grounds inter-alia on the ground appearing in ground (v) at page 17. The said ground reads as under :-

"The petitioner respectfully submits that the advocate of the petitioner has made a representation dtd. 29/3/1997 wherein certain vital and material documents have been asked for for the purpose of making an effective representation against the impugned order of detention. It was requested to the detaining authority to supply the copy of the

representation dtd. 21/2/1997, however, the detaining authority has supplied the copy of the complaint dtd. 20/2/1997 filed by the petitioner before the police inspector of Sarkhej Police Station and has failed to supply the copy of the representation dtd. 21/2/1997 made to the detaining authority itself. Non-supply of vital and material documents which has direct bearing upon the detention of the petitioner has affected the right of the petitioner to make an effective representation guaranteed under Art. 22(5) of the Constitution. Therefore, continued detention of the petitioner has become bad in law."

9. As there was nothing in the affidavit in reply with regard to the aforesaid ground, the file was verified and it could be ascertained that there was a complaint dated 20/2/1997 and representation dated 21/2/1997 in the file. Admittedly the copy of the complaint has been supplied, but the copy of the representation which was made much before the date of the impugned order of detention has not been supplied. I have gone through both the documents. It would clearly appear that the petitioner immediately set up a case about falsely involving him in the alleged dealing of blue kerosene. He also lodged complaint with regard to such false involvement inter-alia alleging therein that the bill was forged. It would thus appear that both the documents, namely the complaint dated 20/2/1997 and the representation dated 21/2/1997 would be relevant and important documents.

10. In the background of the aforesaid facts concerning the aforesaid ground of challenge against the impugned order of detention reliance has been placed upon a decision of this Court dated 14/2/1997 in Special Civil Application No. 8561 of 1996 between Dharmendrakumar Natwarlal Patel and State of Gujarat and others referring to a Division Bench judgment in the case of Lataben R. Uttekar v. The Commissioner of Police reported in 1995 (1) G.L.H. 347, Ashadevi v. K. Shivraj reported in AIR 1979 SC 447, Khudiram Das v. State of West Bengal reported in AIR 1975 SC 550 and M. Ahamedkutty v. Union of India reported in (1990) 2 S.C.C. p.1. This Court held that a relevant and vital document (material) has to be considered by the detaining authority for his subjective satisfaction and having considered such relevant material, copy thereof has to be supplied to the detenu. In the present case the detaining authority does not appear to have considered the aforesaid document and even after representation dated 29/3/1997 copy of the

earlier representation dated 21/2/1997 has not been supplied to the petitioner. Had the copy of the said representation been supplied, the petitioner could have made an effective representation. This is how the provision of Article 22(5) of the Constitution of India would stand violated.

11. The result is that the continued detention of the petitioner under the impugned order of detention will have to be snapped by holding the same illegal.

12. The petitioner has challenged the impugned order of detention and his continued detention on other grounds also. But since the petitioner succeeds in this petition on the ground of non-consideration of as also non-supply of relevant material document/s as aforesaid, it would not be necessary to deal with the other grounds.

13. In the result, this petition is allowed. The continued detention of the petitioner - Jummanbhai Bhurabhai Shaikh under the impugned order of detention is directed to be put to an end and the petitioner shall be released immediately, if not required to be detained in any other case. Rule made absolute in the aforesaid terms.

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